## Duke, Daphne

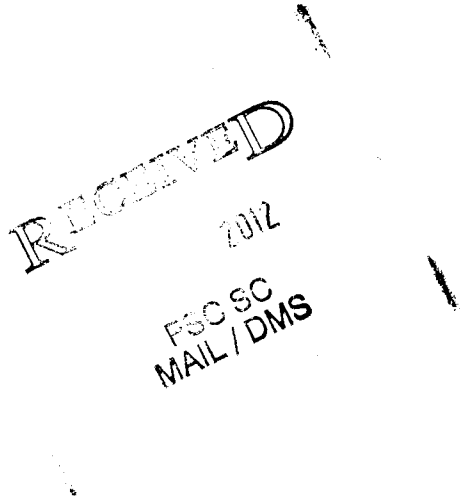
238115

**From:** Easterling, Deborah
**Sent:** Wednesday, August 01, 2012 11:10 AM
**To:** Duke, Daphne
**Subject:** FW: Petition to Reconsider
**Attachments:** 2012-8-1 Petition_to_reconsider.docx

**From:** joe4solar@aol.com [mailto:joe4solar@aol.com]
**Sent:** Wednesday, August 01, 2012 10:59 AM
**To:** Contact
**Subject:** Petition to Reconsider

Please find enclosed
**MOTION TO RECONSIDER**
**DENIAL OF PETITION TO INTERVENE**

The copies will be sent by US PS
Sincerely
Joseph Wojcicki



**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NO. 2012-203-E**

**IN RE:**

| | | |
|---|---|---|
| Petition of South Carolina Electric & Gas Company for Updates and Revisions to Schedules Related to the Construction and Operation of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina. | ) | **MOTION TO RECONSIDER DENIAL OF PETITION TO INTERVENE** |

Joseph Wojcicki ("Petitioner") hereby files with the Public Service Commission of South Carolina ("Commission") this motion to reconsider the denial of his petition to intervene. For the reasons set forth below, the Order denying his petition to intervene should be reconsidered.

**ARGUMENT**

**The Commission erred by holding Petitioner to such a strict interpretation of standing not in accord with South Carolina law or the law followed by other jurisdictions.**

Under South Carolina law, Petitioner has established grounds for standing before the Commission for the injuries he will suffer as a result of the actions of South Carolina Electric & Gas Company ("SCE&G" or "Company"). South Carolina provides a three-part test to establish standing under the constitution's case or controversy requirement: first, the plaintiff must have suffered an "injury in fact," i.e., an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, and not conjectural or hypothetical; second, there must be a causal connection between the injury and the conduct complained of, i.e., the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the

independent action of some third party not before the court; and third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. U.S.C.A. Const. Art. 3, § 1 et seq.; See ATC South, Inc. v. Charleston County, 669 S.E.2d 337 (S.C. 2008). Petitioner has met all three of the requirements and the Commission should therefore reconsider Petitioners standing to bring this petition.

Petitioner has suffered an "injury in fact," which is (a) concrete and particularized, and (b) actual or imminent. Under South Carolina Law, to have standing, one must be a real party in interest, that is, a party who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Ex parte Morris, 367 S.C. 56, 624 S.E.2d 649 (2006). The Supreme Court has interpreted the requirement to include an injury as remote as one's "aesthetic and recreational interests in enjoying and observing wildlife is a judicially cognizable injury in fact for purposes of determining standing." Hill v. South Carolina Dept. of Health and Environmental Control, 389 S.C. 1, 698 S.E.2d 612 (2010). See also Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources, 345 S.C. 594, 550 S.E.2d 287 (2001). The evidence before the Commission shows that Petitioner's recreational interests in the "use of the rivers will be adversely affected" not only by the contaminates added to the river, but, also, by the reduced level of water running in those rivers. Petitioner's injury is cognizable as an injury in fact for purposes of determining standing.

Similarly, using other jurisdictions for guidance would result in a finding that Petitioner has standing. Other jurisdictions have adopted more bright line tests as to when an injury may be construed as concrete and actual. The United States Nuclear Regulatory Commission has adopted the general rule that standing be recognizing for "persons who have frequent contacts

within a 50-mile radius of a nuclear power plant." See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95 (1993). Such a reading of the requirements of standing would be in accord with South Carolina's broad but particularized approach to standing. The evidence before the Commission shows that Petitioner and his family reside well within a 50-mile radius of the proposed plant. Under such a standard, Petitioner's facts would well meet the Commission's requirements for standing.

Similarly, Petitioner's standing is supported by South Carolina's law regarding the public importance exception. South Carolina has adopted an exception to the ordinary standard for finding of an "injury in fact" known as the public importance exception. In cases which "fall within the ambit of important public interest," standing will be conferred "without requiring the plaintiff to show he has an interest greater than other potential plaintiffs." ATC South, Inc., 669 S.E.2d 337. See also Davis v. Richland County Council, 642 S.E.2d 740 (S.C. 2007); Carolina Alliance for Fair Employment v. South Carolina Dept. of Labor, Licensing, and Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999). To have standing under public-importance exception, "plaintiff is not required to show absence of any other potential plaintiffs with greater interest or any other nexus." Sloan v. Department of Transp., 365 S.C. 299, 618 S.E.2d 876 (2005), reh'g denied, (Sept. 22, 2005). Given the abundance of scientific evidence that has developed linking radiological discharges from commercial nuclear reactors to adverse health effects and recent nuclear disasters, Petitioners interest in seeking adequate regulation of SCE&G's activities is more than concrete, particularized, actual or imminent, but of great enough public importance to grant standing.

Finally, Petitioner has presented evidence that he is in fact a shareholder of SCE&G and as a shareholder should have standing to prevent the inappropriate use of millions of his

companies funds for a project that will inevitably fail by either not being completed for lack of adequate licenses or by not being operational most of the year due to a lack of adequate water supply. the liability of corporate officers for misappropriation of corporate property is an asset of the corporation and as such ordinarily can be a basis of suit only by the corporation or shareholder. See Davis v. Hamm, 300 S.C. 284, 292, 387 S.E.2d 676, 680 (Ct. App. 1989).

SCE&G's argument that somehow because their positive outlook on the outcome of their endeavor leaves little risk to Petitioner and that the loss of his and his family's life is somehow not concrete or particular, is inappropriate to base the Commission's ruling. Similarly, relying on previous orders by the Commission regarding Petitioner's standing is misplaced. The Commission is charged with considering Petitioner's standing in this matter based upon present facts. Thus, SCE&G's arguments should fail.

Respectfully submitted,

Joseph Wojcicki – MSEE, consultant in BYPAS INTERNATIONAL

820 East Steele Road. West Columbia, SC 29170-1125 2012 August 1